

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA 18-CR-6094(G)

vs.
XAVIER TORRES, Rochester, New York
Defendant. October 22, 2021
8:30 a.m.
- - - - -X

VOLUME 4

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANK P. GERACI, JR.
UNITED STATES DISTRICT JUDGE

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* * *

(WHEREUPON, the defendant is present).

THE COURT: Good morning.

MR. MARANGOLA: Good morning, Your Honor.

MS. KOCHER: Good morning.

MR. VERRILLO: Good morning, Judge.

THE COURT: Ready to proceed?

MS. KOCHER: Yes, Judge.

THE COURT: Mr. Verrillo?

MR. VERRILLO: Yes.

THE COURT: Mr. Verrillo, you did indicate that you're requesting to break early on October 28th; is that right?

MR. VERRILLO: Yes, Judge.

THE COURT: What time is that?

MR. VERRILLO: The session is at 12, so I thought maybe if I got out at 11:30 I should be okay.

THE COURT: Any objection to that?

MS. KOCHER: No, Your Honor.

MR. MARANGOLA: No, Your Honor.

THE COURT: We'll just change the schedule. I'll let the jury know October 28th we'll be in session 8:30 until 11:30. Great.

MR. VERRILLO: Thank you, Judge.

1 **THE COURT:** Bring the jury out.

2 (WHEREUPON, the jury is present).

3 **THE COURT:** Good morning, members of the jury.

4 Ready to proceed, you may call your next witness.

5 **MS. KOCHER:** Thank you, Your Honor. The Government
6 calls Investigator Stephen Hunt.

7 **GOVERNMENT'S WITNESS, STEPHEN HUNT, SWORN**

8 **DIRECT EXAMINATION**

9 **THE CLERK:** Please state your full name and spell
10 your last name for the record.

11 **THE WITNESS:** Stephen with a P-H, S-T-E-P-H-E-N;
12 Hunt, H-U-N-T.

13 **THE REPORTER:** Thank you.

14 **THE COURT:** You can remove your mask since you're
15 behind plexiglas.

16 **THE WITNESS:** Thanks, Judge.

17 **THE COURT:** There's a second microphone over there
18 if you want to put a cover on that as well.

19 **THE WITNESS:** You got it.

20 **THE COURT:** You may proceed.

21 **MS. KOCHER:** Thank you.

22 **BY MS. KOCHER:**

23 Q. Good morning.

24 A. Good morning.

25 Q. Could you please introduce yourself to the jury?

1 A. My name is Steve Hunt. I'm an investigator with the
2 Brighton Police Department.

3 Q. And, Investigator, how long have you been employed with
4 the Brighton Police Department?

5 A. Since March of 2001. So just over 20 years.

6 Q. And how long have you been an investigator with the
7 department?

8 A. As of October 1st it's been five years.

9 Q. Before becoming an investigator, what was your job with
10 the department?

11 A. Road patrol. Uniform road patrol.

12 Q. Okay. And what were some of your duties as a road patrol
13 officer?

14 A. Hmmm. Calls for service, anything from crimes in-progress
15 to crimes that have already happened, taking the initial
16 report, doing investigations, vehicle and traffic law
17 accidents, dealing with people with mental health issues and
18 just everything -- everything that comes across -- if a turkey
19 went through your plate glass window they would call me to go,
20 things like that, everything.

21 Q. Investigator, if you could hold that microphone to your
22 right a little closer? I think that might be -- thank you.

23 A. Testing, testing.

24 Q. There we go. I think that one to the left is not great.
25 Thank you. Now that you're an investigator what are some of

1 your duties with the police department?

2 A. So as an investigator with the Brighton Police Department
3 we get all the high level crimes, felonies and above,
4 sometimes we get some misdemeanors as well. But everything
5 from homicides, robberies, burglaries, grand larcenies, I'll
6 do assessments on people in the community that are a threat,
7 I'll do background investigations on new hires, everything
8 from police officers to clerks, just everything that comes
9 through that's a little bit higher level, might need a little
10 finessing. That's the kind of stuff I deal with.

11 Q. More follow-up investigations?

12 A. A lot. Some cases can take months to years to complete,
13 so a little bit more intense than being on the road.

14 Q. Now, back in 2015 were you assigned to any specific
15 specialized unit?

16 A. I was. Every 18 months Brighton Police Department will
17 send a representative down to the Greater Rochester Area
18 Narcotics Enforcement Team and we'll work there for 18 months
19 in a unit comprised of multiple agencies from Monroe County.

20 So I'll be working with -- I worked with RPD, the
21 DEA, East Rochester was there, Monroe County Sheriff's Office.
22 So everybody that works together to combat drugs and narcotics
23 in Monroe County.

24 Q. Okay. Is that unit commonly referred to as GRANET?

25 A. Yes.

1 Q. And you were focusing particularly on drug investigations
2 in that assignment?

3 A. Yes.

4 Q. And I think you mentioned that was for about 18 months?

5 A. Yes.

6 Q. Can you explain some of the training you received to
7 become a police officer and an investigator?

8 A. So go to the Academy, like six months' worth of the
9 academy, learn everything from defensive tactics, firearms,
10 vehicle and traffic law, penal law, how to deal with mentally
11 disturbed people.

12 You take all that great knowledge and you go to
13 your police department and you do field training for a couple
14 months, you work with an officer and they graduate you through
15 the steps of, you know, first part of your training you're
16 working with another person, you're doing like 50% of the work
17 and amp it up as you go through this field training process.
18 So you're always learning.

19 I will tell anybody you don't know how to do the
20 job when you're there a good five years. It's a lot of book
21 stuff, but I think people can relate to a lot of the book
22 stuff is not what the real stuff is. So you're always
23 learning, so I'm still learning today. But all kinds of
24 training, everything, school, bookwork, on the job.

25 Q. Okay. So there was training in a classroom and also on the

1 job?

2 A. Oh, yeah.

3 Q. And you successfully completed all that training?

4 A. I did.

5 Q. Okay. Now, I'd like to direct your attention back to
6 April 22nd of 2015. Were you assigned to the GRANET Unit on
7 that day?

8 A. I was.

9 Q. And were you a police officer or an investigator at that
10 point?

11 A. Police officer.

12 Q. Now, on April 22nd of 2015 did you assist with the
13 execution of a search warrant?

14 A. I did.

15 Q. And was that one of the things that you commonly did in
16 the GRANET Unit?

17 A. Yes.

18 Q. Okay. Where was the search warrant or what location was
19 the search warrant for?

20 A. 14 Burbank Street.

21 Q. And is that in the City of Rochester, Monroe County?

22 A. It is.

23 Q. I'd like to show you what's already been received into
24 evidence as Exhibit 35. Investigator, do you recognize the
25 area depicted in this map?

1 A. I do.

2 Q. And what area of the city is this?

3 A. That's Burbank Street between Clinton and Remington.

4 Q. And the location that you searched on April 22nd of 2015,
5 is that depicted on this map?

6 A. It is. There's a number 14 over the house on Burbank
7 Street.

8 Q. Okay. If you wouldn't mind -- hopefully the monitor is
9 working -- just put a circle around that house. You've placed
10 a yellow circle essentially in the middle of the map around
11 the number 14?

12 A. I did.

13 Q. Okay. And that house is on the north side of Burbank
14 Street?

15 A. Correct.

16 Q. Now, what was the basis for the search warrant that you
17 obtained for 14 Burbank Street?

18 A. Drug buys, heroin drug buys using a confidential
19 informant.

20 Q. Are those commonly referred to as controlled purchases?

21 A. Correct.

22 Q. Now, what were you wearing to execute the search warrant
23 that day?

24 A. Black outfit: Black pants, black shirt and we put masks on
25 our heads to hide our identity.

1 Q. Why were you trying to hide your identity?

2 A. Because we were working in the community with confidential
3 informants and people in the drug/narcotics world don't want
4 them to know who we are.

5 Q. Were there also some members of your team that did
6 undercover buys?

7 A. Absolutely.

8 Q. So they would be concerned about hiding their identity for
9 that person?

10 A. For sure.

11 Q. Do you remember about what time you arrived at 14 Burbank
12 that day?

13 A. Approximately 9:57 in the morning.

14 Q. And can you describe the building at 14 Burbank Street?

15 A. Single family home, north side of the street and we made
16 entry on the east side of the house on the side door.

17 Q. Once you made entry into the house were there any people
18 inside?

19 A. There were six people inside.

20 Q. What did you do after you made entry in the location?

21 A. Everybody is secured for everybody's safety, handcuffed,
22 people that were in the house, those six people. Then from
23 there when everybody is safe and secure you take pictures of
24 the house, all the interior rooms, outside of the house as
25 well and then you do a search.

1 Then after you're done with the search you take
2 more pictures and collect any evidence; and if there's any
3 arrests made that happens as well.

4 Q. Now, Investigator, there's a binder in front of you. If
5 you could flip to Exhibit 67 and take a look at Exhibit 67
6 through and including 84. And let me know when you're done.

7 A. I made it to 84.

8 Q. Thank you. You mentioned photographs were taken that day
9 at 14 Burbank?

10 A. Yup.

11 Q. Do you recognize the photographs depicted in Government's
12 Exhibit 67 through and including 84?

13 A. Yes, I took those photos.

14 Q. Okay. Just generally what are those photographs of?

15 A. Exterior of the home, interior of the home, the people
16 that were detained in the home and things that were seized
17 from the home.

18 Q. And do those photographs fairly and accurately depict the
19 location, the people that you encountered and some of the
20 items of evidence that you observed?

21 A. They do.

22 **MS. KOCHER:** Your Honor, I'd offer Exhibit 67
23 through and including 84.

24 **MR. VERRILLO:** I have no objection.

25 **THE COURT:** Exhibit 67, 68, 69, 70, 71, 72, 73, 74,

1 74, 76, 77, 78, 79, 80, 81, 82, 83 and 84 will be received.

2 (WHEREUPON, Government Exhibits 67-84 were received
3 into evidence).

4 **BY MS. KOCHER:**

5 Q. Investigator, would you mind closing that binder so you're
6 not hiding behind anything there. If you could -- also if you
7 hit the monitor in the upper right corner, there should be a
8 little arrow. If you could then hit the clear button at the
9 bottom to clear your mark. Thank you.

10 Investigator, I'd like you to take a look at
11 Exhibit 67 that's been received into evidence. Do you
12 recognize the house in this photo?

13 A. That's the house that we served the search warrant on on
14 that date we talked about.

15 Q. Okay. That's 14 Burbank Street?

16 A. It is.

17 Q. And you made entry into a side door?

18 A. Correct.

19 Q. What side of the house?

20 A. The east side. As we're looking at it, it would be the
21 right side.

22 Q. Okay. Next I'd like you to take a look at Exhibit 68.
23 What's in this photograph?

24 A. The east side of the home and the door that was entered on
25 the house.

1 Q. Okay. And if you wouldn't mind circling the door that you
2 made entry through? All right, so you've circled the door on
3 the side of the house that has a little roof over the top of
4 it?

5 A. Right by that big screen TV.

6 Q. Okay. And does there also appear to be a police officer in
7 this photograph?

8 A. Yes.

9 Q. Okay. Was that someone that was a part of your search
10 team?

11 A. Yes.

12 Q. Okay. If you could clear your circle, please. If you can
13 hit the arrow it will remove the menu. Thank you.

14 Moving on to Exhibit 69, what is this a photograph
15 of?

16 A. That's the door on the east side of the home that was
17 entered.

18 Q. Okay. So when you made entry into the house, this is what
19 you were looking at initially?

20 A. Yes.

21 Q. And you had to go up some steps to get inside?

22 A. Yes.

23 Q. Moving on to Exhibit 70, what is this a photograph of?

24 A. The kitchen area of the home.

25 Q. Okay. We can move on to Exhibit 71. What is this a

1 photograph of?

2 A. I would call that the dining room.

3 Q. Was there any furniture or a dining table in the room?

4 A. No.

5 Q. Moving on to Exhibit 72, what's depicted in this photo?

6 A. One of the bedrooms on the second floor.

7 Q. And there appears to be a mattress on the floor?

8 A. Yeah, yes.

9 Q. Moving on to Exhibit 73, is this another bedroom in the
10 house?

11 A. Yes, on the second floor.

12 Q. What, if any, furniture was in this room?

13 A. Just that Pack 'n Play it looks like.

14 Q. Moving on to Exhibit 74, this is another bedroom?

15 A. Yes.

16 Q. And what, if any, furniture was in this room?

17 A. Just a mattress and blankets.

18 Q. All right. Next Exhibit 75, you mentioned that there were
19 six people in the house?

20 A. Yes.

21 Q. And what is depicted in Exhibit 75?

22 A. Four of the six.

23 Q. And did you come to learn the names of those four
24 individuals in this photograph?

25 A. I did.

1 Q. Starting at the left, who is that person?

2 A. Do you want me to circle them too?

3 Q. Sure.

4 A. First one is going to be Mr. Davis.

5 Q. You've circled --

6 A. Scott Davis, excuse me.

7 Q. You've circled the individual to the left of the photo who
8 is seated on the floor in a gray zip up hooded sweatshirt?

9 A. Yes.

10 Q. And who is to the right of that person seated in a chair?

11 A. That's going to be Raphael Rodriguez with the Kings coat
12 on with the purple and black.

13 Q. If you could circle him just to be clear. So you've
14 circled the person second from the left in the plaid pants
15 seated in the chair?

16 A. Yes.

17 Q. Okay. And who is the individual to the right of Mr.
18 Rodriguez?

19 A. I just circled Bruce Washington.

20 Q. Okay. And that is the male seated with his -- on the floor
21 with his back to the couch in a green plaid T-shirt and jeans?

22 A. Yes.

23 Q. Okay. And who is the fourth individual who is seated on
24 the floor in the most foreground in the photograph?

25 A. Eric Arroyo Cruz.

1 Q. And so you placed a yellow circle around Mr. Arroyo Cruz
2 seated on the floor and has dark hair in a bun?

3 A. Yes.

4 Q. Thank you. If you wouldn't mind clearing your mark? All
5 right. Now, Investigator, I'd like to show you what's been
6 received into evidence as Government's Exhibit 1. All right,
7 there appear to be several people on this exhibit, photographs
8 of several people?

9 A. Yes.

10 Q. Do you recognize any of the individuals on Government's
11 Exhibit 1 as somebody that was in 14 Burbank Street when you
12 executed the search warrant on April 22nd of 2015?

13 A. I do.

14 Q. Could you circle the individual that you recognize? So
15 you've circled the person in the bottom row, to the far left,
16 in a blue hooded sweatshirt?

17 A. Yes, with a little mustache.

18 Q. And who is that individual?

19 A. Raphael Rodriguez.

20 Q. Okay. If you could clear your mark, please. Thank you.

21 All right, if we could go back to your search
22 warrant photos. I'd ask you to take a look at Government's
23 Exhibit 76. So you have previously identified four
24 individuals in the last photograph. Are these two additional
25 individuals that were in the house?

1 A. Yes.

2 Q. And who are these people?

3 A. Francisco Rivera. I'll circle him.

4 Q. You've circled the individual on the left.

5 A. Yup, with the black T-shirt and the goatee. And then
6 Kathryn Figueroa, black female with white hoodie with the hood
7 up on her head.

8 Q. That's the female on the right side of the screen you've
9 circled?

10 A. Correct.

11 Q. Thank you. If you could clear those circles.

12 All right. Now, Investigator, after you secured
13 the individuals that were in the house did you ultimately
14 search the location?

15 A. After photographs were taken, yup.

16 Q. And what were some of the items that you found?

17 A. Found some heroin packaged in purple little glassine
18 baggies with some writing on them; there was a Chinese symbol
19 that said good luck. There was 169 of those.

20 And there was 32 small ziplock -- clear ziplock
21 style baggies with cocaine in it.

22 Q. And where did you recover the cocaine and heroin?

23 A. They were in two floor vents in the dining room on the
24 wall that boarded the living room.

25 Q. Okay. I'd like to show you Exhibit 77, what are we looking

1 at in this photograph?

2 A. That's one of those floor vents I was just describing.

3 Q. All right. And the cocaine and heroin that you seized, is
4 that depicted in this photograph?

5 A. Yes.

6 Q. And where are some of those baggies?

7 A. They're all over. Looks like some in that plastic bag up
8 top, and then little baggies that are falling into the vent.

9 Q. Okay. Those are those white and purple baggies?

10 A. Yes.

11 Q. In the photo?

12 A. Yes.

13 Q. Moving on to Exhibit 78, what's this a photograph of?

14 A. That is a photograph of some of the heroin and cocaine and
15 you also have a fanny pack that contained some of it; some of
16 that heroin is also repackaged into packs of ten, which is
17 called a bundle, and those are in the plastic bags as well.

18 Q. Okay. And are these bags similar to what we just viewed in
19 Exhibit 77 that were in the vent?

20 A. Yes.

21 Q. Now, did you ultimately collect the heroin and cocaine
22 that you recovered from the vent and the fanny pack that day?

23 A. Yes.

24 Q. Okay. Next I'd like to show you Exhibit 79, what is this a
25 photograph of?

1 A. It's another one of those vents and there's that fanny
2 pack, that black fanny pack that contained some of the
3 narcotics.

4 Q. All right. So the fanny pack we just viewed in Exhibit 78,
5 is that the same fanny pack in this photograph?

6 A. Yes.

7 Q. So you recovered the fanny pack from the vent?

8 A. Correct.

9 Q. Okay. Moving on to Exhibit 80, is this another photograph
10 of some drugs that you recovered that day?

11 A. Yes.

12 Q. Okay. Now, you mentioned that you collected the drugs?

13 A. Yes.

14 Q. Investigator, I know I'm a bit of a distance away from
15 you. I am holding Exhibit 85. Have you had a chance to look
16 at this before testifying today?

17 A. Yes, I have.

18 Q. Are these the drugs you seized from 14 Burbank Street on
19 April 22nd of 2015?

20 A. Yes, ma'am.

21 **MS. KOCHER:** Your Honor, I believe this was already
22 received into evidence. If I may just read from the
23 stipulation, it's on page 1.

24 It's Government's Exhibit 85 was seized from 14
25 Burbank Street, Rochester, New York on April 22, 2015.

1 Government's Exhibit 85 contains 32 plastic bags
2 with white powder containing cocaine.

3 The aggregate weight of the cocaine is
4 approximately 3.178 grams.

5 Government's Exhibit 85 also contains 169 glassine
6 bags with tan powder containing heroin.

7 The aggregate weight of the heroin is approximately
8 38.953 grams.

9 **BY MS. KOCHER:**

10 Q. Now, Investigator, in addition to the items that you
11 recovered from the vents in that house, did you search any
12 other areas of the home?

13 A. Yeah, the whole house.

14 Q. Okay. Did that include the attic area?

15 A. It did.

16 Q. What, if anything, did you recover in the attic?

17 A. There was some note pads, there was some new baggies that
18 were consistent with the bags that drugs were housed in that I
19 found downstairs; and there was a cell phone; and some --
20 there was also some mail.

21 Q. I'd like to show you Exhibit 81, do you recognize what's
22 in this photograph?

23 A. Yes.

24 Q. What's in this photo?

25 A. That was just some pills, unknown pills that were seized

1 from upstairs in the house.

2 Q. Is this in the attic area?

3 A. Correct.

4 Q. Okay. Moving on to Exhibit 82, now you mentioned you
5 recovered some baggies that are commonly used for packaging
6 drugs?

7 A. Yes.

8 Q. Are those in this photograph Exhibit 82?

9 A. They are, they're the clear bags with the apple on them.

10 Q. Next Exhibit 83, what's depicted in this photograph?

11 A. That's the note pad and notebook that we recovered.

12 Q. And why were you particularly interested in the note pad
13 or the notebook?

14 A. It looks like there's some numbers and subtraction and
15 adding going on and looked like it might be from drug sales.

16 Q. All right. Next if we could move on to Exhibit 84, what's
17 in this photo?

18 A. Same thing. Small little note pad with some adding, looks
19 like adding on there.

20 Q. All right. That also was significant to you based upon
21 your previous testimony that it appeared to be related to drug
22 sales?

23 A. Correct.

24 Q. Now, Investigator, I'd like to have you take a look at
25 what's been received into evidence as Government's Exhibit 44.

1 Do you recognize any of the houses depicted in Government's
2 Exhibit 44?

3 A. I do. The house directly in the middle.

4 Q. How do you recognize that house?

5 A. That's 14 Burbank Street, but not when we entered it back
6 in 2015.

7 Q. Does the condition of 14 Burbank Street in Exhibit 44
8 appear different from the day you executed the search warrant?

9 A. Yes.

10 Q. What's different about the appearance of 14 Burbank
11 Street?

12 A. Primarily the fire damage on the second floor window
13 there; and all the wood it seems in the front lawn was not
14 there either.

15 Q. The pile of debris in the front yard?

16 A. Yeah.

17 Q. Okay.

18 **MS. KOCHER:** Thank you, Investigator.

19 **THE WITNESS:** Thank you.

20 **THE COURT:** Mr. Verrillo?

21 **CROSS-EXAMINATION**

22 **BY MR. VERRILLO:**

23 Q. Good morning, Investigator.

24 A. Good morning, sir.

25 Q. When you went to the property at 14 Burbank Street on

1 April 22nd, 2015, was Xavier Torres present there?

2 A. No.

3 Q. And you indicated that as a part of your search you had
4 acquired some notebooks and some mail, correct?

5 A. Correct.

6 Q. And did you find any indication that any of the mail or
7 notes were related to Xavier Torres?

8 A. No, sir.

9 Q. And as a part of your conducting the search warrant, did
10 you videotape any of that execution of the search warrant?

11 A. No, sir.

12 Q. Okay.

13 **MR. VERRILLO:** Nothing further.

14 **THE COURT:** Anything further?

15 **MS. KOCHER:** No, Your Honor. Thank you.

16 **THE COURT:** Thank you. You may step down. Thank
17 you very much.

18 **THE WITNESS:** Thank you, Judge.

19 (**WHEREUPON**, the witness was excused).

20 **THE COURT:** Ladies and gentlemen, at this time we're
21 going to take a short recess in order to clean the witness
22 stand. In the meantime, do not discuss the matter or allow
23 anybody to discuss the matter with you. Jury may step down.

24 (**WHEREUPON**, there was a pause in the proceeding).

25 (**WHEREUPON**, the defendant is present).

1 **THE COURT:** We're ready, bring the jury out.

2 **MS. KOCHER:** Judge, before we bring the jury in can
3 we go over a few things? First regarding the stipulation, the
4 parties did agree to foundation evidence for Exhibit 178 and
5 179.

6 We did realize this morning Exhibit 178 is
7 described in the stipulation as being seized from a 2001 red
8 Honda Civic. That is not accurate. It was actually seized
9 from Jose Rodriguez.

10 So I discussed this with Mr. Verrillo, I don't
11 think there's any objection to just handwriting in that change
12 and I'm willing to initial and date that. So on page 3 at the
13 bottom the stipulation would read Government Exhibit 178 was
14 seized from Jose Rodriguez at 2 Burbank Street, Rochester, New
15 York.

16 **THE COURT:** Is that correct, Mr. Verrillo?

17 **MR. VERRILLO:** Yes, Judge.

18 **THE COURT:** Therefore, the stipulation on page 3
19 would be amended, first sentence to read Government Exhibit
20 178 was seized from Jose Rodriguez at 2 Burbank Street,
21 Rochester, New York.

22 **MS. KOCHER:** Thank you.

23 **THE COURT:** Is that, Mr. Torres, you agree with that
24 as well?

25 **THE DEFENDANT:** Yes, Your Honor.

1 **THE COURT:** Yes?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Thank you. Is that it?

4 **MS. KOCHER:** Judge, just briefly, Officer Luciano
5 will be testifying about an encounter with the defendant on
6 February 6th of 2016 where drugs were seized. He was arrested
7 on state charges that day that were ultimately no billed by
8 the Monroe County grand jury and it was dismissed.

9 I would just -- I don't know if Mr. Verrillo
10 anticipates asking about -- asking Officer Luciano if he knows
11 about the disposition of that charge, but it's my position
12 that would be hearsay and not admissible and not an
13 appropriate question to ask.

14 **THE COURT:** Mr. Verrillo?

15 **MR. VERRILLO:** Judge, Officer Luciano was the one
16 who filed the charge and I understand it was dismissed. So
17 that was the basis of me asking the question. He did file it.

18 **THE COURT:** How is it not hearsay?

19 **MR. VERRILLO:** I don't know what he knows or whether
20 he knows or not, but that would be -- I assume they were going
21 to say he was arrested. I don't know if they're going to ask
22 him whether he was arrested or not.

23 **THE COURT:** We'll hear the question. If there's an
24 objection I'll --

25 **MS. KOCHER:** Thank you. And one other matter

1 regarding the cross-examination of Officer Luciano, I'm not
2 sure if Mr. Verrillo has any impeachment material that he
3 anticipates cross-examining him on.

4 I know New York State has recently changed and
5 there are quite a few records available online about Rochester
6 Police Department officers.

7 If there's any disciplinary issues that he intends
8 to cross-examine him on, I would just ask for an offer of
9 proof on that, they go to his truth and voracity as a witness
10 before doing so.

11 **THE COURT:** Mr. Verrillo?

12 **MR. VERRILLO:** There was -- there were no records
13 provided to me by the Government, and I have no impeachment
14 evidence of that kind.

15 **THE COURT:** Okay.

16 **MS. KOCHER:** Thank you.

17 **THE COURT:** Thank you.

18 (WHEREUPON, the jury is present).

19 **THE COURT:** You may call your next witness.

20 **MS. KOCHER:** Thank you, Your Honor. The Government
21 calls Investigator Thomas Luciano.

22 **GOVERNMENT WITNESS, THOMAS LUCIANO, SWORN**

23 **DIRECT EXAMINATION**

24 **THE CLERK:** Please state your full name for the
25 record and spell your last name.

1 **THE WITNESS:** Thomas Luciano, L-U-C-I-A-N-O.

2 **THE REPORTER:** Thank you.

3 **THE WITNESS:** Good morning, Your Honor.

4 **THE COURT:** Good morning. You may remove your mask
5 since you're behind plexiglas. Thank you.

6 You may proceed.

7 **MS. KOCHER:** Thank you.

8 **BY MS. KOCHER:**

9 Q. Good morning.

10 A. Good morning.

11 Q. Could you please introduce yourself to the jury?

12 A. My name is Tom Luciano. I'm a police investigator for the
13 Rochester Police Department. I'm currently assigned to patrol
14 section investigations, and I work 2nd Platoon daytime hours.

15 Q. Now, Investigator, how long have you been an investigator?

16 A. Over three years.

17 Q. Before becoming an investigator, how were you employed?

18 A. I was a police officer for a little over 15 years.

19 Q. Was that with the Rochester Police Department?

20 A. That's correct.

21 Q. And do you have any prior law enforcement experience
22 before joining the Rochester Police Department?

23 A. I worked for the Monroe County Sheriff's Office as a
24 deputy working in the jail.

25 Q. And how long did you work in the jail?

1 A. Over five years.

2 Q. So you have over 20 years experience in law enforcement?

3 A. That's correct.

4 Q. Now, what are your duties as an investigator?

5 A. I respond to in-progress crimes while I'm at work and I
6 also carry a caseload of crimes for follow-up.

7 Q. Okay. And when you were a parole officer what were your
8 duties in that position?

9 A. I responded to 911 calls, investigated all types of
10 crimes; and I also worked in the Tactical Unit doing a lot of
11 proactive policing.

12 Q. Okay. Investigator, would you pull the microphone close
13 to you to make sure we can all hear you. Thank you.

14 All right. Now, you mentioned you would respond to
15 service as a road patrol officer.

16 A. That's correct.

17 Q. Were you assigned to a particular area of the city?

18 A. Most of my career I was assigned to Clinton Section.

19 Q. And about how long were you assigned to the
20 Clinton Section?

21 A. I would say approximately 12 years of my career was spent
22 exclusively in that area.

23 Q. Okay. Can you explain some of your training to become a
24 police officer and an investigator?

25 A. I attended the basic training academy. I also attended

1 many in-services throughout the year. I have attended
2 investigative schools, search warrant schools.

3 Q. Okay. Now, Investigator, you mentioned when you were on
4 the road you worked in the Clinton Section for about 12 years;
5 is that correct?

6 A. That's correct.

7 Q. And did that include the area of North Clinton Avenue and
8 Burbank Street in the City of Rochester?

9 A. It did.

10 Q. Now, during your about 12 years working that area of the
11 city, did you become familiar with that intersection?

12 A. I did.

13 Q. How did you become familiar with that particular
14 intersection?

15 A. I responded there for numerous calls of vice activity
16 taking place, mainly hand-to-hand drug transactions, many
17 shots fired, shootings, homicides, right there in that
18 immediate block.

19 Q. About how often do you think you were in that area of the
20 city during your days on the road?

21 A. I was there daily. My car beat was centrally located
22 right there on Clinton Avenue and right in the area of Burbank
23 Street.

24 Q. I'd like to show you what's been received into evidence as
25 Government's Exhibit 35. It should pop up on your screen

1 there. Do you recognize the area depicted in this map?

2 A. I do.

3 Q. And what is it?

4 A. This is a overhead view of Clinton Avenue and the
5 intersection of Burbank Street.

6 Q. So this is the area of the city that we've just been
7 discussing?

8 A. That's correct.

9 Q. All right. Now, Investigator, while you were going to
10 that area daily did you make observations in the area?

11 A. All the time.

12 Q. And did you also make arrests in the area?

13 A. I had.

14 Q. Now, based upon your observations and some of the arrests
15 and calls you responded to in the area of Clinton and Burbank
16 Street, what were some of the things that you observed?

17 A. Hand-to-hand drug sales, I made many arrests for narcotics
18 near that intersection; also for weapons; responded to
19 shootings; homicides right there near that intersection.

20 Q. When you say hand-to-hand drug sales, what specifically
21 would you see that would be indicative of a hand-to-hand drug
22 sale?

23 A. Individuals meeting in locations that were not visible to
24 the public, going around corners, money being exchanged for
25 drugs.

1 Q. Okay. Was there any area in particular near Clinton and
2 Burbank where you observed that kind of activity?

3 A. Yes. There's a vacant field near that intersection that
4 was specifically an area where that type of activity would
5 take place daily.

6 Q. Okay. Is that field depicted on the map in Government's
7 Exhibit 35?

8 A. It is.

9 Q. Could you please mark with an X the approximate area of
10 that field? So you've placed an X on the north side of
11 Burbank Street just to the left of the house marked 6?

12 A. That's correct.

13 Q. And then to the left of your X there's a building and
14 North Clinton Avenue?

15 A. Correct.

16 Q. What type of drugs were typically sold in this area of the
17 city?

18 A. Mainly heroin and cocaine.

19 Q. Now, Investigator, when you were working this area of the
20 city would you generally operate a marked patrol vehicle?

21 A. I would.

22 Q. When you were operating in your marked patrol vehicle in
23 this area did you make any observations of people in the area?

24 A. I did.

25 Q. When they would see your marked patrol car what were some

1 of the things that you would see?

2 A. They would quickly turn around, vacate the area, they
3 would yell to other individuals who were around and alert them
4 that the police were in the area.

5 Q. All right. Now I'd like to more specifically direct your
6 attention to February 6th of 2016. Were you working as a
7 police officer in the Clinton Section on that day?

8 A. I was.

9 Q. And do you recall what your shift was?

10 A. It was 2nd Platoon. I would work from approximately
11 7 a.m. to 3 p.m..

12 Q. Okay. And were you operating a marked patrol vehicle that
13 day?

14 A. I was.

15 Q. Wearing an RPD issued uniform?

16 A. I was.

17 Q. Did you have a body worn camera at that time?

18 A. I did not.

19 Q. And why was that?

20 A. At that time they were not issued.

21 Q. So you didn't have one assigned to you at that time?

22 A. No, ma'am.

23 Q. Now, at about 9:48 a.m. on February 6th, 2016, where were
24 you?

25 A. I was traveling in my marked patrol car in uniform

1 westbound down Burbank Street at a slow rate of speed.

2 Q. Okay. So you were traveling from Remington Street towards
3 North Clinton?

4 A. Yes, ma'am.

5 Q. And is Burbank a one-way street? Does traffic only go one
6 way?

7 A. I believe it just goes west.

8 Q. Okay. So you were traveling lawfully as you were supposed
9 to on that street?

10 A. That's correct.

11 Q. As you traveled slowly westbound on Burbank Street what,
12 if anything, did you see?

13 A. I observed a red Honda Civic parked right in the area of
14 this field just slightly in front of that building at the
15 corner of Burbank and Clinton.

16 Q. Okay. Is that in the area where you marked that X?

17 A. It is, yes.

18 Q. Okay. And why was your attention drawn to that red Honda?

19 A. I saw an individual standing just outside of that vehicle
20 and he quickly walked away when my patrol vehicle became
21 visible.

22 Q. What happened next?

23 A. That male walked through that vacant lot northbound
24 towards Oscar Street and shortly after that I observed two
25 individuals exit that Honda, one from the driver's seat and

1 another from the front passenger seat.

2 Q. Did you later learn the identity of those two individuals
3 that exited the red Honda?

4 A. I did.

5 Q. And who exited the driver's seat?

6 A. Xavier Torres.

7 Q. Do you see that individual in court today?

8 A. I do.

9 Q. Would you please point him out by an article of clothing
10 that he's wearing?

11 A. He's wearing the white button up shirt with the blue mask.

12 **MS. KOCHER:** Your Honor, could you let the record
13 reflect the witness has identified the defendant?

14 **THE COURT:** Yes, the record will note the
15 identification of the defendant Xavier Torres.

16 **MS. KOCHER:** Thank you.

17 **BY MS. KOCHER:**

18 Q. All right. Investigator, I'd ask you to take a look at
19 Exhibit 1 that's been received into evidence. If you could
20 hit the upper right corner of your screen, a menu should pop
21 up. Hit that arrow and then if you could hit the clear button
22 at the bottom of that arrow, it will erase the X that you
23 made. Thank you.

24 All right, Investigator, we have Government's
25 Exhibit 1 up on the display. Do you recognize the defendant

1 in any of these photographs on Exhibit 1?

2 A. I do.

3 Q. Would you please circle him? All right, so you've circled
4 a photo in the third row, it would be the fourth from the
5 left; is that correct?

6 A. Yes, ma'am.

7 Q. And the defendant appears to be wearing a brown or tan
8 collar shirt?

9 A. That's correct.

10 Q. Did there come a time you learned the defendant went by
11 any nicknames?

12 A. I did.

13 Q. What was that nickname?

14 A. Pistolito.

15 Q. Had you seen the defendant in the Burbank area before
16 February 6th of 2016?

17 A. I had.

18 Q. Particularly where on Burbank Street?

19 A. On the X that I indicated on the map and also near the
20 area of number 6 Burbank.

21 Q. If we could go back to Exhibit 35, if you could clear the
22 circle you just made? Would you place that X again in the
23 area where you would generally see the defendant?

24 A. And also in this area as well.

25 Q. So you've placed two X's. One on the house with the 6 on

1 the roof and the second X is where you had previously marked
2 the vacant lot just to the left of that house, correct?

3 A. That's correct.

4 Q. Okay. And on that day February 6th the defendant exited
5 the driver's seat of the red Honda?

6 A. He did.

7 Q. Was it actually the driver's seat?

8 A. Yes, it was the driver's seat, yes.

9 Q. You also mentioned a second person exited the red Honda,
10 correct?

11 A. Correct.

12 Q. What seat did that individual exit from?

13 A. The front passenger seat.

14 Q. Did you learn who that person was?

15 A. Mr. Jose Rodriguez.

16 Q. I'd like to show you what's not in evidence as Exhibit 15.
17 Do you recognize the individual depicted in Exhibit 15?

18 A. I do.

19 Q. And who is in that photograph?

20 A. Mr. Rodriguez.

21 Q. Is that the same person that exited the front passenger
22 seat of the red Honda that day?

23 A. Yes, ma'am.

24 Q. And does this photograph fairly and accurately depict the
25 way that he looked back then?

1 A. Yes, ma'am.

2 MS. KOCHER: Your Honor, I'd offer Exhibit 15 into
3 evidence.

4 MR. VERRILLO: No objection.

5 THE COURT: Exhibit 15 will be received.

6 (WHEREUPON, Government Exhibit 15 was received into
7 evidence).

8 BY MS. KOCHER:

9 Q. Now, Investigator, based upon your familiarity with the
10 area, the fact that you observed somebody standing outside of
11 that red Honda, and the observations of the people fleeing the
12 area as your marked patrol car made its way down Burbank
13 Street, what did you suspect?

14 A. I suspected that some type of criminal activity,
15 specifically drug activity, was taking place.

16 Q. Okay. And what did you do?

17 A. I then observed both the driver and passenger enter the
18 side door of an apartment building at 1264 North Clinton.
19 They quickly entered the building and shut the door behind
20 them. I then exited my patrol vehicle and followed them
21 inside.

22 Q. When you say the driver and the passenger, was that the
23 defendant and Mr. Rodriguez that's depicted in Exhibit 15?

24 A. Yes, ma'am.

25 Q. If we could go back to Exhibit 35, the map of the area?

1 Is the building that the defendant and Mr. Rodriguez entered
2 depicted on this map?

3 A. It is.

4 Q. And where is that? You've circled the building on the
5 north side of Burbank Street at the intersection with North
6 Clinton?

7 A. Correct.

8 Q. Where was that red Honda parked in relation to that
9 building?

10 A. Want me to make another X on there?

11 Q. Sure.

12 A. In this area here.

13 Q. So you've placed a little X at the end of the building,
14 the right side of the building?

15 A. Correct.

16 Q. Now, after you observed the defendant and Mr. Rodriguez
17 make entry into that apartment building, what did you do?

18 A. I followed them inside.

19 Q. And what happened when you got inside?

20 A. Upon entering the location I observed both Mr. Rodriguez
21 and Mr. Torres standing in the common hallway that led to a
22 number of apartments.

23 Q. And did you speak with them?

24 A. I did.

25 Q. Who did you speak with?

1 A. Mr. Torres.

2 Q. The defendant?

3 A. That's correct.

4 Q. What did he tell you?

5 A. I asked him who he came to visit at the location.

6 He stated that he was there to visit an aunt.

7 I also asked him how he got to the location.

8 And he then informed me that he had walked there.

9 Q. Okay. What else did you talk to him about?

10 A. I asked him about a Honda that was out front. And he
11 stated that he had no possession of that Honda prior to me
12 entering the building.

13 Q. Did you ask him if he had driven to the location?

14 A. I did.

15 Q. What did he tell you?

16 A. He stated that he had not.

17 Q. Okay. Did he tell you where he had walked there from?

18 A. He said he had walked from his brother's house on Dewey
19 Avenue.

20 Q. Now, did any of what the defendant told you inside that
21 apartment building correspond to what you had seen on the
22 street?

23 A. It did not.

24 Q. Okay. What didn't make sense to you?

25 A. I had just seen him exit that vehicle and he denied

1 exiting it. He stated that he had walked there from Dewey
2 Avenue, and I know Dewey Avenue to be on the opposite side of
3 the city and in the opposite direction of where I had seen him
4 walk from the vehicle to the apartment door.

5 Q. While you were speaking with him did you make any
6 observations of him?

7 A. He appeared nervous to me, I could see him breathing
8 heavily and his chest rising and fall at a rapid pace.

9 Q. Did there come a time that you conducted a pat-frisk of
10 the defendant?

11 A. I did.

12 Q. And what is a pat-frisk?

13 A. It's just a quick frisk to determine if someone is in
14 possession of weapons that may be an immediate threat to
15 officers.

16 Q. Okay. Did he have any weapons on him?

17 A. He did not.

18 Q. Okay. Did you recover anything during that pat-frisk?

19 A. I recovered a Honda key.

20 Q. And did you confront the defendant with the recovery of
21 the key?

22 A. I did.

23 Q. What happened then?

24 A. He stated that it belonged to a Honda that was parked at
25 his brother's house on Dewey Avenue.

1 Q. Okay. What happened next?

2 A. Because of what I described before, his nervousness, his
3 breathing heavily, all the lies that he had told me, I placed
4 him into handcuffs and had him sit on the doorstep of the
5 entryway to the apartment building on Clinton Avenue while I
6 walked over to the vehicle that he had just left.

7 Q. At this point were there other officers with you?

8 A. There were.

9 Q. Were they also in RPD uniforms?

10 A. They were.

11 Q. After the defendant was handcuffed and you had him sit on
12 the step there, what did you do?

13 A. I then walked over to the vehicle that I had observed
14 Mr. Torres exit from.

15 Q. Okay. And as you walked over to that vehicle what
16 happened?

17 A. I heard my partner Officer Pike yell that Mr. Torres was
18 attempting to flee.

19 Q. Okay. And did you see the defendant fleeing?

20 A. I saw him running in the direction of Clinton Avenue
21 handcuffed behind his back.

22 Q. Okay. So he's running while he was handcuffed?

23 A. That's correct.

24 Q. Okay. Was he apprehended nearby?

25 A. Very quickly and in a very short distance, yes, he was

1 taken into custody.

2 Q. All right. Now, Investigator, I'd like to have you look
3 at Exhibit 174 that's already in evidence. If you could clear
4 that circle and the little X's that you've made. Thank you.

5 Investigator, do you recognize the area depicted in
6 this photograph?

7 A. I do.

8 Q. And what are we looking at?

9 A. Am I allowed to draw on this screen?

10 Q. Sure.

11 A. This door here is the door that I observed them enter.

12 Q. Okay. And just before you move on, you've made a circle
13 around the door on the left side of the photograph?

14 A. Correct.

15 Q. And that's the apartment building that you described
16 earlier?

17 A. Yes, ma'am.

18 Q. Okay. What street is depicted in this photograph?

19 A. That's Burbank Street.

20 Q. Okay. And would we be looking towards Remington from this
21 vantage point?

22 A. Looking towards Remington in an eastbound direction.

23 Q. North Clinton would be behind the photographer?

24 A. Yes, ma'am.

25 Q. And is the red Honda depicted in this photograph?

1 A. It is positioned on the north side of the roadway behind
2 that white Chevy with the yellow plate.

3 Q. Okay. You've made a circle around a red vehicle behind the
4 white car that's parked on the road?

5 A. Yes, ma'am.

6 Q. Okay. And is that the vehicle that you saw the defendant
7 and Mr. Rodriguez exit?

8 A. Yes.

9 Q. Okay. Moving on to Exhibit --

10 A. I'm sorry, the defendant Torres exit?

11 Q. Yes.

12 A. Yes.

13 Q. And did you see Mr. Rodriguez exit the front passenger
14 seat?

15 A. I did.

16 Q. Okay. Moving on to Exhibit 175 -- if you could clear those
17 circles. Is this another photograph of that same vehicle that
18 you just circled?

19 A. Yes, ma'am.

20 Q. And what was the license plate of the car?

21 A. H as in Henry, D as in David, N as in Nora, 5250.

22 Q. Now, once Mr. Torres -- after he had fled and was detained
23 again, did you have a chance to approach the vehicle?

24 A. I did along with Officer Romeo.

25 Q. What were some of the things that you observed as you

1 approached the car?

2 A. Officer Romeo had alerted me that he had seen hyperdermic
3 needles in the back seat. I also observed that the plate on
4 the vehicle did not match the sticker of registration in the
5 window.

6 Q. Okay. Now, Investigator, I'd like to show you what's been
7 received into evidence as Exhibit 181. Does this appear to be
8 a DMV abstract registration record?

9 A. Yes, ma'am.

10 Q. Okay. And does this registration record correspond to the
11 license plate HDN 5250?

12 A. It does.

13 Q. Okay. Who was the registered owner of that license plate?

14 A. Obed Torres Garcia with a date of birth of August 25th,
15 1997.

16 Q. Is there an address associated with Mr. Torres Garcia?

17 A. 145 Liberty Pole, apartment No. 5.

18 Q. Okay. And that's in Rochester, New York?

19 A. Correct.

20 Q. And this registration record is also for a red Honda?

21 A. Yes, ma'am.

22 Q. Okay. That license plate is the same license plate as the
23 vehicle you saw the defendant exit on February 6th, 2016?

24 A. Yes, ma'am.

25 Q. If we could go to Exhibit 176, is this another photograph

1 of that same vehicle?

2 A. It is.

3 Q. We're looking at the driver's side of the car in this
4 photo?

5 A. That's correct.

6 Q. Okay. Now, in addition to the mismatched registration
7 sticker and the needles that were in plain view, was there
8 anything else in plain view in the vehicle?

9 A. I observed a set of trimmers and I just responded earlier
10 in the morning to the report of stolen trimmers being taken
11 from a Rite-Aid.

12 **MR. VERRILLO:** Objection, hearsay.

13 **THE COURT:** Overruled. He said he responded to a
14 report, so overruled. Go ahead.

15 **THE WITNESS:** I responded to a report of hair
16 trimmers being stolen from the Rite-Aid at 1000 North Clinton
17 Avenue.

18 **BY MS. KOCHER:**

19 Q. Now, based upon your observations of the items in plain
20 view of the car, was it ultimately searched?

21 A. It was.

22 Q. Was the car locked?

23 A. It was.

24 Q. How were you able to get inside the vehicle?

25 A. With the key that Mr. Torres had on his person.

1 Q. Okay. Do you recall where that key was on his person?

2 A. It was in his jacket pocket.

3 Q. All right. What, if anything, did you observe during the
4 search of the car?

5 A. On the driver's floorboard I observed a clear plastic
6 sandwich bag. It contained 67 bags of heroin and over 100
7 bags of cocaine.

8 Q. I'm sorry, was that from the drive's floorboard?

9 A. That's correct.

10 Q. Did you search any other areas of the car?

11 A. I also searched the center console.

12 Q. What, if anything, was in the center console?

13 A. In the center console were a few hundred individually
14 packaged bags of heroin and cocaine as well.

15 Q. Now, the driver floorboard area where you observed the
16 quantity of drugs, was that the same seat that the defendant
17 had exited?

18 A. It is.

19 Q. Now, Investigator, I have in my hand here Exhibit 179.
20 Have you had a chance to look at this exhibit before
21 testifying today?

22 A. I have.

23 Q. And are these the drugs that you received -- that you
24 recovered from the vehicle both the center console and from
25 the floorboard area?

1 A. Yes, ma'am.

2 **MS. KOCHER:** Your Honor, if I may read from the
3 stipulation on page 4. It states Government's Exhibit 179 was
4 seized from a 2001 red Honda Civic bearing New York
5 registration HDN 5250 at 2 Burbank Street, Rochester, New York
6 on February 6th, 2016.

7 Government's Exhibit 179 contains 25 yellow plastic
8 bags with white powder containing cocaine.

9 The aggregate weight of the cocaine is
10 approximately 0.325 grams.

11 Government Exhibit 179 also contains 174 gray
12 plastic bags with white powder containing cocaine.

13 The aggregate weight of the cocaine is
14 approximately 8.352 grams.

15 Government Exhibit 179 also contains 266 glassine
16 bags stamped Magoo with tan powder containing heroin.

17 The aggregate weight of the heroin is approximately
18 13.3 grams.

19 And, Your Honor, if I may offer Government's
20 Exhibit 179.

21 **MR. VERRILLO:** No objection.

22 **THE COURT:** Exhibit 179 will be received.

23 (**WHEREUPON**, Government Exhibit 179 was received
24 into evidence).

25 **BY MS. KOCHER:**

1 Q. Now, Investigator, when you recovered these drugs that are
2 in Exhibit 179 from the vehicle, did you notice any markings
3 on it?

4 A. There were markings on the wax paper envelopes that had
5 heroin, was contained inside.

6 Q. And what were those markings?

7 A. The bags -- the envelopes were white with blue markings,
8 and those blue markings said the word Magoo, M-A-G-O-O.

9 **MS. KOCHER:** Your Honor, may I place Exhibit 179 on
10 the visualizer so the jury may see those markings?

11 **THE COURT:** Yes.

12 **MS. KOCHER:** Thank you.

13 **BY MS. KOCHER:**

14 Q. All right, Investigator, I've placed Exhibit 179 on the
15 visualizer. Are these some of those bags that you described
16 as being white and having the Magoo stamp?

17 A. Yes, ma'am.

18 Q. And that's in a blue font?

19 A. Correct.

20 Q. Now, in addition to searching the vehicle that day, were
21 the defendant and Mr. Rodriguez also searched?

22 A. They were.

23 Q. And what did you recover, if anything, from their person?

24 A. From Mr. Rodriguez an additional amount of cocaine and
25 heroin, approximately 100 bags were recovered from his person;

1 and United States currency was recovered from the both of
2 them.

3 Q. Okay. Do you know how much currency was recovered from Mr.
4 Rodriguez and the defendant?

5 A. The defendant had approximately \$500 in cash; and Mr.
6 Rodriguez had approximately \$100 in cash.

7 Q. And what were the denominations of that amount of money?

8 A. They were in small denominations consistent with the sale
9 of narcotics.

10 **MR. VERRILLO:** Objection.

11 **THE COURT:** Yes, sustain the last part of the
12 answer.

13 **BY MS. KOCHER:**

14 Q. Now, did the defendant have any needles on his person or
15 other items indicative of drug use?

16 A. No, ma'am.

17 Q. Okay. Did he have any drugs on his person?

18 A. No, ma'am.

19 Q. Now, you mentioned that Mr. Rodriguez did, in fact, have
20 drugs on his person, though?

21 A. That's correct.

22 Q. Were those collected as evidence?

23 A. Yes, ma'am.

24 Q. Investigator, I have in my hand what's been marked as
25 Government's Exhibit 178. Have you had a chance to look at

1 this before testifying today?

2 A. I have.

3 Q. And are these the drugs seized from Mr. Rodriguez's
4 person?

5 A. They are.

6 **MS. KOCHER:** Your Honor, if I may read from the
7 stipulation? This is beginning on the bottom of page 3 and
8 onto page 4.

9 The stipulation the parties have agreed to states
10 Government's Exhibit 178 was seized from Jose Rodriguez at 2
11 Burbank Street, Rochester, New York on February 6th, 2016.

12 Government Exhibit 178 has 46 glassine bags stamped
13 Magoo with tan powder containing heroin.

14 The aggregate weight of the heroin is approximately
15 2.346 grams.

16 Government Exhibit 178 also contains 50 gray
17 plastic bags with white powder containing cocaine.

18 The aggregate weight of the cocaine is
19 approximately 5.75 grams.

20 Your Honor, I would offer Government's Exhibit 178.

21 **MR. VERRILLO:** No objection.

22 **THE COURT:** Exhibit 178 will be received will be
23 received in evidence.

24 (**WHEREUPON**, Government Exhibit 178 was received
25 into evidence).

1 **BY MS. KOCHER:**

2 Q. If we can go back to Government's Exhibit 35.

3 Investigator, can you explain some of the addresses that we've
4 discussed here and that were included in the stipulation,
5 particularly 2 Burbank Street versus -- I believe you gave a
6 North Clinton Avenue address earlier?

7 A. 2 Burbank Street I believe is this location here.

8 Q. Okay. So is that at the back of the apartment building
9 that you described earlier?

10 A. Yes.

11 Q. And what is the address of the apartment building, if you
12 know?

13 A. 1264 North Clinton.

14 Q. Okay. So the front of that building would actually be on
15 North Clinton as opposed to Burbank Street?

16 A. That's correct.

17 Q. All right. Now, Investigator, the drugs that were seized
18 from Mr. Rodriguez's person that have been received as
19 Government's Exhibit 178, did those have any stamps or
20 markings on them?

21 A. They did, they had the same markings, the blue lettering
22 with the word Magoo stamped on it.

23 Q. Okay. And those are the same markings that we just saw
24 the exhibit I placed on the visualizer?

25 A. Yes, ma'am.

1 **MS. KOCHER:** Judge, I have one additional exhibit
2 that's been received, that is Exhibit 152, that I'd like to
3 place on the visualizer if I may?

4 **THE COURT:** Yes.

5 **MS. KOCHER:** Thank you.

6 **BY MS. KOCHER:**

7 Q. Just to orient the jury, Government's Exhibit 152 that's
8 been received into evidence and stipulated to by the parties
9 is evidence that was seized from a 2003 GMC Envoy bearing
10 New York registration GYZ 8750 at 6 Burbank Street on December
11 16 of 2016.

12 I've placed a slit in Government's Exhibit 152 and
13 I am removing some of the exhibits. I think it will be easier
14 to see. Investigator, I've placed a bag that was removed from
15 Exhibit 152 on the visualizer. Are you able to see that item?

16 A. I am.

17 Q. Okay. And do you recognize any of the markings on the bags
18 that I just placed on the visualizer?

19 A. The markings on the bags are the same markings that I
20 observed from the heroin recovered both from Mr. Rodriguez and
21 from the Honda out front of No. 2 Burbank Street.

22 Q. Those appear to be the white envelope with the blue Magoo
23 written on it?

24 A. That's correct.

25 **MS. KOCHER:** Thank you, Investigator. I don't have

1 any further questions.

2 CROSS-EXAMINATION

3 **BY MR. VERRILLO:**

4 Q. Investigator, did you have any further contact with the
5 person who left the area?

6 A. I did not.

7 Q. On that date did you find out where that person was or who
8 it was?

9 A. I did not.

10 Q. So you were driving down Burbank Street and you saw the
11 red Honda which was parked at the time, right? When you first
12 got there?

13 A. That's correct.

14 Q. And so the vehicle was not operational when you had
15 observed it?

16 A. It was not.

17 Q. Okay. And you didn't observe any criminal activity prior
18 to getting out of your vehicle; is that right?

19 A. That's correct.

20 Q. And you indicated that Mr. Torres and this other gentleman
21 had gone to the apartment complex and entered it. Is there
22 anything illegal about leaving the area and going into an
23 apartment complex?

24 A. No, sir.

25 Q. And was Mr. Torres obligated to wait for you to talk to

1 him?

2 **MS. KOCHER:** Objection.

3 **THE COURT:** Overruled. Go ahead, you can answer
4 that.

5 **THE WITNESS:** He had no obligation to talk to me.

6 **BY MR. VERRILLO:**

7 Q. And he had no obligation to wait for you, correct?

8 A. That's correct.

9 Q. Okay. And after you got the key from Mr. Torres, you had
10 searched the vehicle, correct?

11 A. I had first made some observations into the vehicle before
12 I searched it.

13 Q. Okay. But you didn't ask for anyone's consent to go into
14 the vehicle, correct?

15 A. Mr. Torres gave no indication that he possessed the car
16 and, no, I did not get consent.

17 Q. Okay. And while you were there did you find out who the
18 registered owner of the vehicle was?

19 A. I did not.

20 Q. Okay. And you didn't have a search warrant to enter the
21 vehicle, correct?

22 A. That's correct.

23 Q. And when you did search Mr. Torres, is it true that he did
24 not have any drugs on him?

25 A. He did not have any drugs on him, no.

1 Q. Okay. And at the time that Mr. Torres was in your
2 presence, isn't it true that he hadn't committed any crime?

3 A. He did not commit a crime, no.

4 Q. Okay. Now, after going into the vehicle do you know
5 whether the police department did any testing inside the
6 vehicle for any fingerprints?

7 A. There were no fingerprints taken.

8 Q. Okay.

9 **MR. VERRILLO:** Your Honor, if I could just have one
10 moment?

11 **THE COURT:** Sure.

12 **BY MR. VERRILLO:**

13 Q. At the time that you had the stop on -- of Mr. Torres, you
14 didn't know who he was, correct?

15 A. I didn't know his name.

16 Q. Okay. All right. But you had seen him in the neighborhood
17 before?

18 A. That's correct.

19 Q. Okay.

20 **MR. VERRILLO:** I have nothing further.

21 **REDIRECT EXAMINATION**

22 **BY MS. KOCHER:**

23 Q. Investigator, Mr. Verrillo asked you if the -- when you
24 saw the car it was not operational. It wasn't moving,
25 correct?

1 A. It was not moving.

2 Q. It was parked?

3 A. Parked.

4 Q. You don't know if the car actually worked?

5 A. I don't know if it worked or not, no.

6 Q. And when you spoke with the defendant in the apartment
7 building, he denied any possession of that vehicle?

8 **MR. VERRILLO:** Objection.

9 **THE COURT:** Overruled.

10 **THE WITNESS:** He did. He denied any possession of
11 that vehicle.

12 **MS. KOCHER:** All right, thank you.

13 **THE COURT:** Anything further?

14 **MR. VERRILLO:** No, Your Honor.

15 **THE COURT:** You may step down. Thank you very much.

16 **THE WITNESS:** Thank you.

17 **(WHEREUPON, the witness was excused).**

18 **THE COURT:** Ms. Kocher, you don't have any
19 additional witnesses today; is that right?

20 **MS. KOCHER:** No, Judge. We did indicate to the
21 Court yesterday we are moving a little quicker than we
22 anticipated. Our next witness we have some scheduling issues
23 with, so unfortunately we don't have any additional witnesses
24 today.

25 **THE COURT:** Ladies and gentlemen, I don't think

1 anybody is going to be broken hearted if we break early today.

2 Sometimes this happens because of the availability,
3 unavailability of certain witnesses and, therefore, we are
4 going to conclude the testimony today and come back on Monday
5 at 9:30.

6 There's one change in the schedule next week.
7 Thursday we'll be in session from 8:30 until 11:30 instead
8 of -- currently it says 1:30, we're going to be leaving early
9 on that date as well. Next Thursday, October 28th you'll be
10 8:30 to 11:30.

11 Now, this week you've heard a lot of evidence in
12 this case. It's important you not make up your mind or
13 discuss the case with anybody. Obviously you'll have a long
14 weekend. You may see other people who want to ask you what
15 was going on during the trial.

16 Please remember that under your oath you promised
17 not to make any statements to anybody, talk to anybody or do
18 any research or find out any information regarding this case.
19 To do so would be unfair to both of the parties in this case.
20 So we know you'll abide by that admonition, but I have to
21 remind you of that as well.

22 With that understanding the jury may step down
23 until Monday morning, October 25th at 9:30. Have a great
24 weekend.

25 (**WHEREUPON**, the jury was excused).

1 **THE COURT:** Have a good weekend, everybody.

2 **MS. KOCHER:** Thank you.

3 **MR. VERRILLO:** Thank you.

4 (WHEREUPON, proceedings adjourned at 11:53 a.m.)

5 * * *

6 **CERTIFICATE OF REPORTER**

7
8 In accordance with 28, U.S.C., 753(b), I certify that
9 these original notes are a true and correct record of
10 proceedings in the United States District Court for the
11 Western District of New York before the Honorable Frank P.
12 Geraci, Jr. on October 22nd, 2021.

13
14 S/ Christi A. Macri

15 Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
16 Official Court Reporter
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